

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 28 July 2008 has been entered.
2. The amendment, filed 28 July 2008, amends claim 1. Claims 1-5, 7-15, 17-27 and 29-38 are pending.

Response to Amendment

3. The rejection of:
Claims 1, 8, 17, 20, 21, 37 and 38 under 35 U.S.C. 103(a) as being unpatentable over Kennedy-Skipton, US 4,114,384;
is withdrawn in view of applicant's arguments, filed 28 July 2008.

Claim Objections

4. Claim 33 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the

claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim 33 depends from claim 6, which has been cancelled.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-5, 7-11, 13-15, 17-27 and 29-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Morris et al., US 5,482,551.

Morris teaches:

As to claims 1-5, 9, 10, 24-27, 36-38:

Column 1, line 54 through column 2, line 30, teach an extrudable composition comprising gypsum (calcium sulfate hemihydrate), a binder in the amount of 0.5 to 20 weight percent, and water. The passage additionally teaches the use of a stoichiometric amount of water to rehydrate / cure the gypsum. The composition can also include additional materials such as fillers.

Column 2, lines 31-34, teach the composition can be alpha gypsum.

Column 2, lines 48-54, teach the formation of a substantially homogeneous composition.

Column 4, lines 26-37, teach clay as a filler and rheology modifier. The amount of clay typically used is up to about 12 percent.

Column 5, lines 11-42, teach varying the amount of water and filler to control strength and processibility.

As to claims 7, 8, 29-34 :

Column 3, lines 60-63, teach binder materials including cellulosic materials, and polyvinyl alcohol.

As to claims 11, 15:

Column 4, lines 26-42, teach fiber as a filler material. The fiber is advantageously used to improve wet strength. The fiber can be present in an amount up to 20 weight percent.

As to claim 13:

Column 4, lines 52-57, teach perlite as a density reducing additive.

Column 5, lines 55-57, teach perlite as a light weight aggregate.

Column 2, lines 1-2, teach the perlite can be present in an amount up to 35 weight percent.

As to claim 14:

Column 6, line 4, teaches the fiber can be glass fiber.

As to claims 17-19, 21, 22, 23, 35:

Column 6, lines 20-50, teach mixing the ingredients, adding the ingredients to an extruder, and extruding the material onto a belt. The extrudate exiting the die was at a temperature of 80 to 84 degrees Fahrenheit. The passage also teaches the use of a hardening retarder.

As to claim 20:

Column 2, lines 3-10, teach the binder can be mixed with water prior to mixing with the other ingredients.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 8-11, 13-15, 17-19, 21, 22, 24-27, and 36-38 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Dailey et al., US 2,571,343, for reasons of record in the office action, mailed 16 April 2007.

Claims 7 and 29-34 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Dailey et al., US 2,571,343 as applied to claims 1-6, 8-11, 13-19, 21, 22, 24-27, and 36-38 above, and further in view of Hashimoto et al., US 4,174,230, for reasons of record in the office action, mailed 16 April 2007.

Claims 23 and 35 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Dailey et al., US 2,571,343 as applied to claims 1-6, 8-11, 13-19, 21, 22, 24-27, and 36-38 above, and further in view of Morris et al., US 5,482,551, for reasons of record in the office action, mailed 16 April 2007.

Claim 12 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Dailey et al., US 2,571,343 as applied to claims 1-6, 8-11, 13-19, 21, 22, 24-27, and 36-38 above, and further

in view of Tanei et al., US 4,301,356, for reasons of record in the office action, mailed 16 April 2007.

Response to Arguments

8. Applicant's arguments have been fully considered but they are not persuasive.

With respect to the Dailey reference applicant argues that Dailey does not teach or suggest the composition of independent claim 1 and that Dailey is directed to a pourable mixture. Applicant also argues that the rejection was arrived at by hindsight reconstruction of the instant invention. The examiner respectfully disagrees for the reasons below.

Dailey in the heavy mix composition teaches an uncured mixture which is stiff and hard. The composition also comprises sufficient water to hydrate the gypsum and can comprise all the compositional elements contemplated by applicant. This embodies the properties as contemplated by applicant and is equated with a composition which is self supporting. While the preferred embodiment of Dailey concerns pourable gypsum mixtures, Dailey teaches the heavy mix and recognizes the properties of the heavy mix composition. Applicant is reminded that a reference is prior art for all it teaches. Accordingly, no hindsight reconstruction was employed, as Dailey teaches a composition which exhibits the properties desired by applicant.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brett A. Crouse whose telephone number is (571)-272-6494. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald L. Tarazano can be reached on 571-272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/B. A. C./
Examiner, Art Unit 1794

/Bruce H Hess/
Primary Examiner, Art Unit 1794